

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA06-1349

April 25, 2007

JOSEPH BEATTIE
APPELLANT
v.

AN APPEAL FROM THE WASHINGTON
COUNTY CIRCUIT COURT
[J-05-168-3]

ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES
APPELLEE

HONORABLE STACY A. ZIMMERMAN,
JUDGE

AFFIRMED

The Washington County Circuit Court terminated the parental rights of appellant Joseph Beattie, and his wife Terri Beattie, to their daughter, M.B.¹ Beattie now challenges the sufficiency of service of process as well as the grounds for terminating his parental rights. We affirm.

M.B., d.o.b. 4/29/96, was taken into custody by the Arkansas Department of Health and Human Services (DHHS) on February 16, 2005, when Beattie was arrested and incarcerated. At the time, M.B.'s mother, Terri, was serving twenty years in prison for burglary. A February 25, 2005, probable-cause order placed M.B. in the temporary custody of family friends, Tammy and Scott Moore, and gave Beattie supervised visitation.

¹We do not address Terri's case because it is not before us.

On April 15, 2005, the court determined that M.B. was dependent-neglected and found that M.B.'s return to Beattie was contrary to her best interests. Reunification was set as the goal. The order granted Beattie supervised visitation upon release from jail and ordered him to follow the case plan and to resolve his criminal issues. M.B. was placed in foster care by the court on June 21, 2005. In an order dated October 12, 2005, the court ordered Beattie to follow the case plan; to obtain and maintain stable employment and housing; to submit to and pass random drug screens; to attend family counseling; to participate in parenting classes; to cooperate with DHHS; and to resolve his criminal charges.

On January 25, 2006, despite Beattie's failure to comply with its orders and the case plan, the court held that reunification remained the goal. Beattie was ordered to comply with his parole agreement upon release from prison and to pass random drug screens. He was also authorized to write letters to M.B. upon the approval of M.B.'s therapist.

A permanency planning order was entered on May 17, 2006, precluding any contact between Beattie and M.B. and changing the goal of the case to adoption. DHHS filed a petition on May 24, 2006, asking the court to terminate Beattie's parental rights. DHHS asserted that termination was in M.B.'s best interest considering the likelihood of adoption and the potential harm that would be caused by returning her to her parents' custody.

At the June 22, 2006, termination hearing, Beattie moved for dismissal, asserting that service was defective. Beattie claimed that the petition was sent to the Arkansas Department of Correction after his June 9, 2006, release on parole. He also alleged that a copy of the

termination petition was not attached to the summons. DHHS asserted that it also served Beattie by warning order in the *Arkansas Democrat Gazette*. The court denied Beattie's motion.

Heather Van Brunt, the DHHS family services worker, testified that Beattie had not followed the case plan. She had no address or working phone number for Beattie and was not sure whether Beattie completed parenting classes. Van Brunt said Beattie had failed to submit to drug screens or attend family counseling. No services were provided to Beattie because he told DHHS that he did not need any. Moreover, family counseling was not provided to Beattie because the no contact order was in place at the time of his release from prison.

Van Brunt also testified that terminating Beattie's parental rights was in M.B.'s best interest and that M.B. would be harmed if returned to her parents because they provided her no stability. Due to their frequent arrests, M.B.'s parents were constantly going in and out of her life. Van Brunt testified that Beattie had not seen M.B. since February 2005 and that M.B. was adjusting to her new home and was doing well. Van Brunt also stated that there was a likelihood that M.B. would be adopted.

Beattie testified that he could provide M.B. with stability. He presently lived in an apartment and had a cell phone. He could support M.B. financially because he was employed and made between \$400 to \$450 per week. He said that he had not paid child support for M.B. because he was not asked to do so. Beattie confirmed that he last saw M.B. in February 2005 but asserted that, except when he was incarcerated, M.B. had lived with him since her birth.

He stated that he had taken good care of M.B.; they always had a close relationship; and, if given the chance to come around him again, M.B. would want to live with him.

Beattie testified that he attempted to comply with the court's orders. He attended life skills and parenting classes while incarcerated. He provided Van Brunt with his address and phone number when he was released from prison on June 9, 2006. He also attempted to speak with a therapist in Benton County, but she would not return his phone calls. He stated that he had been on parole for sixty-five days and that he had complied with the terms of his parole. Also, while incarcerated, he wrote two or three letters to M.B., but they were returned. He also testified that, while in prison, he was unable to call DHHS because it would not accept collect phone calls.

Beattie admitted that M.B. was probably harmed by his numerous incarcerations. He explained that, when DHHS took M.B. into custody, he was in jail for traffic violations and for violating his parole on a commercial-burglary conviction. In 1998 and 2002, he was incarcerated for drugs and commercial burglary, respectively. In February 2005, he was arrested for possessing drug paraphernalia and admitted to being a recreational methamphetamine user; however, he claimed that he told the officer what he wanted to hear. Although Beattie had a charge pending at the time of the hearing, he stated that it was for a crime for which he had already served time and that it would be dismissed. He claimed that, upon dismissal of that charge, all of his criminal issues would be resolved.

The court found both parents unfit and terminated their parental rights. The court found

that Beattie was incarcerated throughout the case and that, since his release from prison, Beattie had maintained short-term stability with respect to employment and housing. His short-term compliance, however, was not enough to justify returning M.B. to his custody. Beattie now appeals.

Beattie first argues that the court erred in denying his motion to dismiss for insufficiency of service of process. The trial court ruled that DHHS properly served Beattie by warning order, and Beattie claims the warning order was defective because (i) it failed to state that a copy was mailed to him and (ii) the certified mail was not addressed to him. Beattie, however, failed to make these arguments to the trial court, and this court will not consider arguments raised for the first time on appeal. *Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005).

Beattie also argues that DHHS failed to prove that termination was in M.B.'s best interest or that statutory grounds for termination existed. Parental termination orders are reviewed de novo and will not be reversed unless they are clearly erroneous. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). A finding is clearly erroneous when, although there is evidence supporting it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was made. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005). Due regard is given to the opportunity of the trial court to judge the credibility of witnesses and great weight is given to the trial judge's personal observations. *Bearden v. Ark. Dep't of Human Servs.*, 344 Ark.

317, 42 S.W.3d 397 (2001).

The two-step process for terminating parental rights requires the court to find that the parent is unfit and that termination is in the best interest of the child. *J.T. v. Ark. Department of Human Services*, 329 Ark. 243, 947 S.W.2d 761 (1997). The court should consider factors such as the likelihood of adoption and the potential harm to the health and safety of a child if subjected to continuing contact with the parent. Ark. Code Ann. § 9-27-341(b)(3)(A)(i) & (ii) (Supp. 2005). A heavy burden is placed on the party seeking termination, *Jones v. Arkansas Department of Human Services*, 361 Ark. 164, 205 S.W.3d 778 (2005); however, parental rights will not be enforced to the detriment of the health and well-being of the child. *J.T.*, *supra*.

The court can terminate parental rights upon a finding of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

...

(ii) (a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

...

(vii)(a) That other facts or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B).

The termination at issue met the criteria set forth in the statute, and therefore the trial court did not err. Beattie argues that he complied with the DHHS case plan because he secured stable housing and employment. Although this is evidence of partial compliance, it is insufficient to prevent the termination of parental rights, *Chase v. Arkansas Department of Human Services*, 86 Ark. App. 237, 184 S.W.3d 453 (2004), the trial court could have terminated Beattie's parental rights even if he had completed the case plan. *Wright v. Arkansas Department of Human Services*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). The most important factor is whether participating in the case plan achieved the intended results of making the parent capable of caring for the child. *Id.*

Beattie failed to comply with the case plan and the court's orders while in prison and his recent compliance was not sufficient to prevent termination. Although Beattie argues that his release from prison corrected the conditions that caused M.B.'s removal, he had a criminal charge pending at the time of the termination hearing and faced the possibility of returning to jail. The trial judge was not required to believe Beattie's assertion that those pending charges would be dismissed. *Id.*

Furthermore, M.B. was out of the home for approximately fifteen months while Beattie was incarcerated. During this time, M.B. had no contact at all with Beattie. In addition, she had lived with relatives on several occasions during her life because Beattie was repeatedly incarcerated. Beattie also failed to maintain significant contact with M.B. or to provide any material support to her. He even admitted that it was not in M.B.'s best interest to reside with

him and see him being arrested. He also testified that he was not prepared to take custody of M.B. at the time of the hearing.

The trial court did not err in finding that terminating Beattie's parental rights was in M.B.'s best interest because Beattie was incapable of providing M.B. with the stability and permanency that she required. Further, the trial court did not err in finding that the statutory grounds for termination existed. We, therefore, affirm.

Affirmed.

PITTMAN, C.J., and MARSHALL, J., agree.